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MICHAEL C. TRAHOS, D.O.
GENERAL MEDICINE/FAMILY PRACTICE

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Amendment of Parts 73 and 74)
of the Commission's Rules to)
Permit Certain Minor Changes)
in Broadcast Facilities)
Without a Construction Permit)

MM Docket No. 96-58

COMMENTS

Submitted by: Region-20 Public Safety Review Committee
Legislative/Regulatory Affairs Committee
Dr. Michael C. Trahos, D.O., NCE, CET - Chairman
4600 King Street, Suite 4E
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Date: May 15, 1996

I.

INTRODUCTION

1. Before the Federal Communications Commission (Commission) is a NOTICE OF PROPOSED RULE MAKING (NOTICE) to amend 47 CFR 73 and 74 to permit certain minor changes in broadcast facilities without a construction permit.

2. Pursuant to the authority given by the Commission under the Report and Order in General Docket No. 87-112 1/, the Region-20 Public Safety Planning Committee was created to address the future communications needs and concerns of the PSRS users for Region-20. The obligations of that Committee included the submission to the Commission of a Region-20 Public Safety Radio Communications Plan (Region-20 Plan) 2/ and establishment of a Region-20 Public Safety Review Committee (Committee) to oversee its implementation.

3. This NOTICE has raised important issues. This Committee, representing the PSRS/governmental constituents for Region-20, hereby submits the following timely filed **COMMENTS** in response to this NOTICE, addressing those issues of most concern and their potential effects on the Region-20 Plan implementation process and/or constituency.

II.

COMMENTS

4. On February 8, 1996, the Telecommunications Act of 1996 (the "1996 Act") became law.^{3/} The "1996 Act" modified Section 319(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 319(d), and states, "the Commission may by regulation determine that a permit shall not be required for minor changes in the facilities of authorized broadcast stations."^{4/} (Emphasis added).

5. The instant NOTICE proposes to eliminate the requirement, in 47 CFR 73.1690(b)(2), that a construction permit application be filed by a television (TV) broadcast station "proposing to increase or decrease the amount of vertically polarized ERP."^{5/} The Commission's engineering justification for this action rests on the premise that "changes in the vertically polarized ERP will not cause new interference to other broadcast stations."^{6/} Though TV broadcast vertically polarized ERP changes would have minor effects to adjacent TV broadcast facilities, such changes, however, would have major ^{7/} effects upon adjacent land mobile facilities.

6. On October 20, 1987, the Commission adopted the Notice of Proposed Rule Making/Notice of Inquiry (TV Cross-service Interference Notice), MM Docket No. 87-465, to address the major

"problem of objectionable interference between television stations operating on channel 14 or 69 and land mobile stations operating on frequencies adjacent to either channel."8/ In the TV Cross-service Interference Notice, the Commission proposed "to require that all new applicants for construction permits for channel 14 or 69, and for site changes of existing operations on either channel, satisfy certain technical criteria designed to protect existing adjacent-channel land mobile operations from interference from new UHF-TV operations."9/

7. On November 30, 1990, this Committee participated in a joint Oral Ex Parte Presentation regarding on-going Channel 14 (WTMW-TV) and future potential Channel 69 TV Cross-service interference to regional 47 CFR Part 90 Public-Safety/Special Emergency/Land Mobile Radio Services and General Mobile Radio Service operations.10/ The joint Oral Ex Parte presenters asserted that had the Commission expeditiously reached a Report and Order in the TV Cross-service Interference Notice in 1988, and established adequate technical controls to minimize interference to adjacent 47 CFR Part 90 and 95 land-mobile operations, the on-going regional Channel 14 TV cross-service interference being experienced could have been preventable.11/

8. On July 30, 1991, the Commission adopted the Report and Order in MM Docket No. 87-465 (TV Cross-service Interference Order).^{12/} The TV Cross-service Interference Order codified the Commission's First-in-time policy ^{13/}, adopted the principle of TV stations that are "Last in" fix cross-service interference first ^{14/}, and added new rule paragraphs 47 CFR 73.687(e)(3) and (e)(4).

9. In issuing the instant NOTICE, the Commission has seemingly overlooked the TV Cross-service Interference proceeding, MM Docket No. 87-465, and the major impact TV broadcast station changes to vertically polarized ERP has upon existing adjacent 47 CFR Part 90 and 95 land mobile systems. Commission adoption of the proposed changes to 47 CFR 73.1690(b)(2), pursuant to paragraph 5 supra, will conflict with 47 CFR 73.687 and create new TV cross-service interference concerns to adjacent land mobile operations.

10. In the TV Cross-service Interference Order, the Commission concluded that a 30 dB TV cross-polarization isolation discrimination figure was achievable "for the land mobile rejection of horizontally polarized TV signals ..."^{15/} Adoption of the proposed changes to 47 CFR 73.1690(b)(2), pursuant to paragraph 5 supra, could result in a potential

maximum 30 dB increase in TV cross-interference to adjacent land mobile operations.

11. Under current rule 47 CFR 73.1690, a TV broadcast facility that desires to change its vertically polarized ERP is required to file an application to modify its station license or construction permit. Such a filing gives adjacent land mobile licensees the opportunity to file comments in opposition to any proposed vertically polarized ERP changes.

12. The proposed changes to 47 CFR 73.1690(b)(2), pursuant to paragraph 5 supra, eliminates the right of adjacent land mobile licensees to voice their opposition. And as this Committee, and member entities, have already experienced, trying to get an adjacent "Last in" TV broadcast station to make interference reduction changes to their established facility is extremely difficult, if not impossible.

13. In the instant NOTICE, the Commission has determined that potential FM cross-interference does exist to TV Channel 6 operations.^{16/} As such the Commission does not intend to extend the proposed changes of 47 CFR 73.1690(b)(2) to FM stations that are adjacent to TV Channel 6 facilities in certain circumstances.^{17/}

14. In concert with paragraphs 9 & 13 supra, this Committee strongly recommends that the Commission also not extend the proposed changes of 47 CFR 73.1690(b)(2) to any TV broadcast facility adjacent to any spectrum authorized for land mobile use.^{18/} Such an exemption would keep the status quo and continue requiring TV broadcast stations operating on TV Channels 14 through 20 and 69 to file FCC Form 302-TV, and receive approval from the Commission, prior to making any changes in their vertically polarized ERP emissions.

15. In a different yet related cross-service interference proceeding, the Commission has recently adopted a Notice of Proposed Rule Making, MM Docket No. 96-62, which proposes amendments to 47 CFR Part 73 to more effectively resolve the problem of broadcast station blanketing interference (Blanketing Interference Notice).^{19/} Specifically, the Commission proposes the "consolidation of Sections 73.88, 73.318, and 73.685(d) to combine the blanketing interference rules into a new single rule Section 73.1630, for AM, FM, and TV services."^{20/}

16. In the Blanketing Interference Notice, the Commission noted that with the "proliferation of new communications services and technology into established neighborhoods"^{21/}, and in particular concern regarding interference that may result to

developing "future PCS and specialized mobile (SMR) systems"22/, the question has been raised as to whether a broadcast station's blanketing interference resolution "obligation ends with that initial group of complaints that files within one year, or whether the station's obligation should extent to subsequent residents."23/ In other words should broadcast stations be indefinitely responsible to resolve blanketing interference problems, forever losing their claims to non-responsibility under the First-In-Time policy or Last-In-Fixes-First doctrine.

17. As is asked in the Blanketing Interference Notice so should the same question, as elaborated in paragraph 16 supra, be asked in the instant NOTICE, but in reference to global TV cross-interference to adjacent land mobile operations. Just as an apparent concern exists for blanketing interference to developing PCS and SMR systems, so too should a Commission concern exist for apparent global TV cross-interference problems to established and future developing land mobile systems in the 465-512 MHz 24/ and 806-811 MHz bands 25/, regardless of whether the proposed changes to 47 CFR 73.1690 are adopted or not.

18. This Committee urges the Commission to consider, in light of paragraph 16 supra, whether TV broadcast facilities should be made indefinitely responsible to correct all forms of TV cross-service interference to adjacent land mobile

operations, further and forever losing their claim to non-responsibility under the First-In-Time policy or Last-In-Fixes-First doctrine. Without such a strong consideration, it is very likely that future auctions of the "refarmed" 465-512 MHz band or currently utilized Public-safety 800 MHz spectrum 26/ will not gross the large monetary quantities anticipated because of the Commission's inability to guarantee that the auctioned spectrum will be forever enforceably free of TV cross-service interference.

III.

CONCLUSION

19. This proceeding proposes to eliminate the requirement, under 47 CFR 73.1690(b)(2), that a construction permit be first filed with the Commission for TV broadcast stations desiring to change their vertically polarized ERP emission. The Commission's engineering justification for this rule change is based on the premise that changes in broadcast vertically polarized ERP will cause no new interference to adjacent broadcast stations.

20. In reaching this conclusion, the Commission has seemingly overlooked the TV Cross-Interference proceeding, MM Docket No. 87-465, and the significant effect changes in TV broadcast station vertically polarized ERP has upon adjacent 47 CFR Part 90 and 95 land mobile operations. Commission adoption of the proposed change to 47 CFR 73.1690(b)(2), regarding vertically polarized ERP emissions, will result in new significant interference to adjacent land mobile facilities.

21. This Committee recommends that:

(1) The Commission not extend the proposed changes of 47 CFR 73.1690(b)(2) to any TV broadcast facility adjacent to any spectrum authorized for land mobile use,

(2) The Commission modify 47 CFR 73.687(e)(3)&(4) to reflect that any TV broadcast facility adjacent to land mobile operations that elects to change its

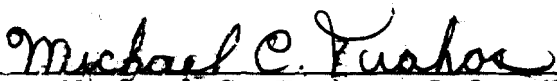
vertically polarized ERP losses its First-In-Time status, reverts to Last-In, and is subsequently responsible to correct any and all TV cross-service interference to existing adjacent land mobile facilities, and

(3) The Commission, concerned with interference to proliferating new communications services and technologies, should strongly consider enacting rule changes that would make broadcast facilities indefinitely responsible to correct all forms of TV induced cross-service interference.

22. This Committee has shown that the proposed change to 47 CFR 73.1690(b)(2), and in particular proposed changes that allows increases in vertically polarized ERP emissions adjacent to land mobile operations, constitutes a major change in the facilities of authorized TV broadcast stations. Pursuant to the "1996 Act", "the Commission shall not have any authority to waive the requirement of permit for construction" when a TV broadcast station requests a major change to its facility.27/

23. Incorporation of this Committee's recommendations would make the Commission's proposed rule changes be in compliance with the "1996 Act" and is therefore in the public interest.

Respectfully submitted,


Dr. Michael C. Trahos, D.O., NCE, CFT
Chairman - Region-20 Legislative/
Regulatory Affairs Committee

IV.

FOOTNOTES

- 1/ REPORT AND ORDER, GN Docket No. 87-112, FCC 87-359, Paragraph 4.
- 2/ WASHINGTON, D.C. METROPOLITAN AREA - REGION 20, GN Docket No. 90-7, DA 90-28, January 17, 1990.
- 3/ TELECOMMUNICATIONS ACT OF 1996, P.L. 104-104, 110 Stat. 56 (1996), February 8, 1996.
- 4/ Ibid, 110 STAT. 132, at Section 403 (m).
- 5/ NOTICE OF PROPOSED RULE MAKING, MM Docket No. 96-58, FCC 96-118, March 19, 1996, Paragraph 14.
- 6/ Ibid.
- 7/ REPORT AND ORDER, MM Docket No. 83-415, 51 FR 13263, April 18, 1986. Note: The Commission found that cross-service interference was such a major problem, the Commission was suspending all new channel 69 assignments until the Commission "could find an adequate solution to the problems caused by electromagnetic emissions from new television stations on adjacent land mobile facilities."
- 8/ NOTICE OF PROPOSED RULE MAKING, MM Docket No. 87-465, FCC 87-336, 2 FCC Rcd 7328 (1987), Paragraph 1.
- 9/ Ibid, at Paragraph 2.
- 10/ ORAL EX PARTE PRESENTATION, MM Docket No. 87-465, County of Fairfax, Virginia, Region-20 Public Safety Review Committee, Metropolitan Washington Council of Governments, November 30, 1990, in general.
- 11/ Ibid, at paragraphs 3 through 5.
- 12/ REPORT AND ORDER, MM Docket No. 87-465, FCC 91-241, July 30, 1991.
- 13/ See Midnight Sun Broadcasting Company, 11 FCC 1119 (1947).
- 14/ PUBLIC NOTICE, MM Docket No. 87-465, Report No. DC-1927, August 2, 1991.

- 15/ REPORT AND ORDER, MM Docket No. 87-465, FCC 91-241, July 30, 1991, at Paragraph 20.
- 16/ NOTICE OF PROPOSED RULE MAKING, MM Docket No. 96-58, FCC 96-118, at Paragraph 16.
- 17/ Ibid.
- 18/ 47 CFR PART 90, SUBPART L & 47 CFR 73.687(e)(3) & (e)(4).
- 19/ NOTICE OF PROPOSED RULE MAKING, MM Docket No. 96-62, FCC 96-124, March 21, 1996.
- 20/ Ibid., at Paragraph 1.
- 21/ Ibid., at Paragraph 19.
- 22/ Ibid., at Paragraph 24.
- 23/ Ibid., at Paragraph 19.
- 24/ REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULE MAKING, PR Docket No. 92-235, FCC 95-255, June 15, 1995 (Refarming Docket).
- 25/ FIRST REPORT AND ORDER, PR Docket No. 93-144, FCC 95-501, December 15, 1995 (Wide-Area SMR Docket).
- 26/ NOTICE OF PROPOSED RULE MAKING, WT Docket 96-86, FCC 96-155, April 5, 1996, at Paragraph 92.
- 27/ TELECOMMUNICATIONS ACT OF 1996, P.L. 104-104, 110 STAT. 132, February 8, 1996, Section 403(m), 47 USC 319.